COMMENTS

of the

UNITED MOTORCOACH ASSOCIATION

Relating to the

"**FEDERAL MOTOR CARRIER SAFETY REGULATIONS:**
DEFINITION OF COMMERCIAL MOTOR VEHICLE"

Before the

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)

Docket No. FMCSA-2000-7017

Submitted --April 10, 2001

The United Motorcoach Association (UMA), once again, appreciates the opportunity to provide the Federal Motor Carrier Safety Administration (FMCSA) with comments relating to the above captioned notice of proposed rulemaking (NPRM) on the re-definition of commercial passenger vehicles as required under Section 4008 of the Transportation Equity Act for the 21st Century.

UMA is the Nation's largest association of professional motorcoach owners and operators. We represent approximately 1,000 of the Nation's largest and smallest private commercial passenger carriers as well as more than 200 motorcoach manufacturers, component vendors and service suppliers. UMA operator members provide tour and charter, scheduled services, commuter, airport shuttle, and school transportation services in both interstate and intrastate commerce. Many also provide transportation services for hire using "mini-buses," limousines and vans which would be newly-regulated under this proposed rulemaking.

While many of the following remarks will echo UMA's previous submissions to the Docket on advanced notices, we sincerely hope that readers of these comments will pay very careful attention to this submission in light of the FMCSA's Notice of Proposed Rulemaking (NPRM) published on January 11, 2001. In that NPRM, the FMCSA chose to ignore both reasoning and cautions stated by the UMA in its ANPRM submission of October 29, 1998, instead developing justifying statistics and reasoning on its own. The UMA is most anxious to address the FMCSA's most recent points prior to the publication of any final rule.

This document, then, should be supplemented by our comments (97-2858-238) which are already filed in the FMCSA Docket. Those comments are also attached to the conclusion of this commentary.

Overview:

The United Motorcoach Association (UMA) is very disappointed with the NPRM issued January 11, 2001, and with its companion final rule issued on that same date. We believe that, at best, both represent the FMCSA's abrogation of its statutory responsibility to regulate for-hire motor carriers of passengers in interstate commerce and, at worst, they ignore the agency's own assessment of the need for safety supervision of an entire population of carriers. They violate the most fundamental premise for Congress' repeated actions by failing to exercise safety oversight on commercial passenger carriers operating in the so-called "commercial zone" along our international borders. Instead, the feeble final rule implements minimal requirements for vehicle marking and registration and it reserves, within the proposed rule, a future consideration of the right to impose stricter safety standards on a segment of these carriers based on arbitrary "distance-traveled" criteria.

Neither the final rule nor the proposed rule which is the subject of these

comments implements any meaningful safety control or oversight on hundreds of thousands of drivers or vehicles to which paying passenger entrust their lives on a daily basis. Worse yet, this proposed rule acknowledges the presence of a startling number of highway deaths in the very class of vehicle which they propose to exempt from most safety oversight. UMA most strongly urges reconsideration of the applicability standards contained in the proposed final rule.

Once again, the UMA wishes to strongly emphasize its belief that all for-hire carriers of passengers other than local taxi services -- regardless of size, type of vehicle or distances traveled -- be made subject to all Federal Motor Carrier Safety Regulations (FMCSR). A business accepts the ultimate responsibility for human life when it accepts payment for transportation.

The FMCSA should not suggest by its rules that it is not acceptable to jeopardize many lives at a time but it is acceptable to jeopardize a few.

I. Is the FMCSA regulating for safety or convenience?

> *The UMA finds the proposed rule's implementation of a 75-air mile line of demarcation for the applicability of more stringent safety regulation to be counter to the FMCSA's own indications of need and it is a self-serving limitation on the class of carriers to be regulated.*

Historically, the UMA has found that division of for-hire carriers based on the size of vehicles they operate as a determining factor for the applicability of Federal Motor Carrier Safety Regulations has had little or no connection to actual safety considerations or statistics. Instead, the determining factor in setting these arbitrary levels has been the enforcing agency's ability to manage the population of carriers.

In the wake of Congress' first safety regulatory instructions in the mid 1980's, the population of passenger carriers was much smaller, as was the range of vehicles used for commercial interstate transportation. By proportion, the population of federal enforcement personnel per carrier was higher, as well. As a result, regulators of that time arbitrarily determined that a vehicle carrying 15-passengers, including the driver, was a "manageable" population. Recall, as well, the much higher level of anticipated interaction between regulators and the regulated at that time; motor carrier safety ratings were implemented with the full expectation that all interstate commercial carriers would be visited by a federal enforcement agent and would be subjected to a compliance review. This kind of "preventative" enforcement would allow a personal interaction which would contribute, in turn, to safer carriers.

Sadly, history demonstrates that the prospective safety outline of the mid-80's was much too ambitious. With substantial deregulation of interstate carriers of both freight and passengers, the regulatory agencies were soon overwhelmed by an avalanche of new entities. Today, fewer that one-fourth of all passenger carriers authorized to operate in interstate commerce have been subjected to a federal compliance review. In response to the proliferation of carriers, and in an

attempt to better use available improved technological capabilities, less than a decade later the regulatory community moved to a "performance-based" safety management system.

The performance-based approach has been heralded by regulators as a step forward. In truth, it represents the regulators' practical acquiescence to an already-unmanageable database of carriers. It works on the same principle used by metropolitan police forces: those who discovered committing minor infractions are recorded on the blotter. If your name comes up enough times on the blotter, you're identified as a carrier who might create a larger problem. At some point -- depending on the number of enforcement agents available -- someone may visit you. Unfortunately, the odds are with the violators. A more frequent and likely scenario brings regulators to the door of an unsafe carrier only after a catastrophe. In the passenger carrier world, unsafe carriers are most commonly identified after someone has died.

The UMA believes, then, that the size of and expected workload on the enforcement team is the reason why the FMCSA has chosen, once again, to divide the community of carriers using an arbitrary applicability of safety rules. Instead of applying all of the rules required for the operation of a large vehicle -- the rules which the agency has already determined are appropriate for commercial carriage of passengers -- the FMCSA has selected a 75-air mile eligibility to reduce its own level of responsibility and work. In doing so, the UMA believes that the FMCSA ignores the much greater good which can be achieved by applying the same rules to all carriers, regardless of vehicle size.

It has been the UMA's experience that the mere promulgation of safety standards on the community of passenger carriers will -- even without active enforcement -- lead to voluntary compliance by a vast majority of all carriers. By constraining the applicability of the proposed rule, the FMCSA has essentially forfeited any increased safety factor which could come from voluntary compliance.

We understand the FMCSA's reluctance to add new enforcement responsibilties while it struggles to find the resources for effective enforcement of its current carrier database. The UMA has actively recommended a number of steps to solve that problem: the certification of so-called "third party" inspectors; the infusion of new funding to expand enforcement workforces; the identification of reliable, equivalent, carrier information from other sources. Solutions are out there. But they can't be invoked or pursued until the FMCSA is ready to openly admit that it has promulgated minimalist rules because it fears the additional workload.

We sincerely hope that the FMCSA will recognize the safety need for all-inclusive rules rather than continue to limit its rules to a "workable" community of carriers.

II. How many deaths are too many?

In reviewing the proposed rulemaking, the UMA was stunned to read the

FMCSA's justification for the near-complete exemption from safety oversight for those small vehicle operators who operate within a 75-air mile radius:

> *"Of the remaining 146 fatal accidents in which the large van was transporting 9 or more people at the time of the crash, 45 of them (approximately 31 percent) appear to have been interstate trips with the crash taking place in a State other than the State where the driver was licensed, and at a distance greater than 100 statute miles from the driver's residence."*

While the agency failed to record how many passengers died in the 146 fatal accident database which it used to determine the need for strong regulation of this motor carrier segment, it did give us a time frame: three years, 1996, 1997 and 1998. What stuns the UMA about those statistics is not the high number of persons who died but the fact that the agency somehow construes those statistics as an indication that the small carrier segment does NOT need safety oversight and regulation. It appears exactly the opposite to UMA.

In an average three-year period, according to reliable statistics from the National Transportation Safety Board (NTSB), FARS or virtually any other database we know of, the commercial motorcoach industry experiences six passenger deaths. If we tally the average number of passenger and "other vehicle" fatalities, the average may reach as many as 30 annually. While the UMA finds any highway death tragic, we're understandably proud of the very low incidence of fatal injury associated with the Nation's community of professional, fully-regulated, passenger carriers.

If we apply the FMCSA's criteria for regulatory oversight as applied in this proposed rulemaking, the entire commercial passenger carrier industry should be subjected to far LESS regulation than it now endures. May we, also, simply mark the coaches with a USDOT number, maintain an accident register and file the MCS-150 and scrap the remainder of the FMCSR's when the day's service doesn't reach past a 75-air mile radius? The UMA believes the proposal's 75-air mile exemption from more stringent safety rule applicability is entirely inappropriate within the FMCSR's except, possibly, in a discussion of hours-of-service regulation.

III. Commercial Zone exemptions

As has already been pointed out, the UMA disagrees with the use of a 75-air mile (or any distance-related) exemption from federal motor carrier safety regulations. It should not, then, surprise anybody that the UMA applies that same criteria to the proposal's exemption of small vehicle carriers with the so called "commercial zones" which commonly occur at interstate and international borders.

We are quick to remind the agency -- again -- that the primary and most compelling reasons for the Congress to enact small carrier safety oversight within

the Interstate Commerce Commission Termination Act (ICCTA) in 1995 were the very poor safety and compliance records of Mexican van operators entering the U.S. at Southwest border crossings in the late 80's and early 90's. Commonly referred to as "camionetas," this class of unregulated operators created safety hazards within the available commercial zones. Their public record of regulatory disobedience and disregard for safety laws is well documented in the U.S. communities which lie adjacent to the U.S./Mexico border. To exempt carriers operating within these border zones from U.S. safety oversight is completely unwarranted and irresponsible.

Again, we remind the agency that historically, this government has applied two levels of regulatory oversight on motor carriers who operate in more than one state or between two Nations. The first level was an economic control; the second a safety control. While the Interstate Commerce Commission (ICC) was alive, a motor carrier of passengers was subject to the ICC's economic regulation when it carried a paying passenger over a state line. The carrier was not subject to ICC economic regulation if the passengers never crossed a state line. If that same motor carrier entered an adjacent state without passengers on board, however, it nevertheless remained subject to USDOT safety regulation.

Commercial zones were created by the ICC to provide a motor carrier with greater business flexibility to service customers on both sides of a state or international border. It was that agency's recognition of the fact that many contiguous "communities" or "neighborhoods" developed in this nation without regard to a political boundary which separated their parts. Commercial zones were never created to serve as asylum from safety rules and regulations. This proposal, nonetheless, suggests that a van operator is, by definition, safe inside a commercial zone when they may not be safe outside one. The logic is beyond unsound. It is dangerous and it is silly.

IV. Summary

Congress has spoken, now, three separate times since 1995 on the issue of its desire to have in place small passenger vehicle safety oversight. It did not "invite" the USDOT to regulate motor carriers for hire in the nine-to-fifteen passenger range, nor did it "suggest" that it be done. Congress mandated that regulation be imposed. Time and again, the responsible agency -- first the Federal Highway Administration (FHWA)'s Office of Motor Carrier Safety and now with Federal Motor Carrier Safety Administration (FMCSA) -- has tried to drag its feet, to redefine the directives, to ignore the need. Now it has offered proposed regulations which subdivides the entire class of carriers into categories which any reasonable and prudent observer would classify as "questionable" and "bad."

With all the bravado of a daylight bandit, the FMCSA has in this proposed rulemaking recorded an alarming occurrence of fatal crashes involving this class of vehicle and told us that the numbers are evidence of a need to exercise greater safety oversight only on a very small segment of those carriers. We disagree sharply on the issue. We also disagree most strenuously with the implied premise that passengers riding in a 40,000-pound motorcoach driven by a professional driver are in greater danger (and therefore in greater need of federal safety

oversight) than a passenger aboard a 12-seat van driven by a part-time student.

Ironically, but maybe not coincidentally, on April 9, 2001, just two days before the closing date on these comments, the National Highway Traffic Safety Administration (NHTSA) issued a warning about the safety hazards of this class of vehicle and, in specific, emphasizes the need for greater-than-normal driver skills to operate this vehicle in a safety manner while it is used to transport passengers at or near its capacity. UMA's concern in this matter is substantial enough that we take the opportunity to include NHTSA's public warning:

"FOR IMMEDIATE RELEASE
Media Calls:Rae Tyson (202) 366-9550
Consumer Calls: Auto Safety Hotline 1-888-327-4236
April 9, 2001

"**CONSUMER ADVISORY**

"The National Highway Traffic Safety Administration (NHTSA) is issuing a cautionary warning to users of 15-passenger vans because of an increased rollover risk under certain conditions.

"The results of a recent analysis by NHTSA revealed that 15-passenger vans have a rollover risk that is similar to other light trucks and vans when carrying a few passengers. However, the risk of rollover increases dramatically as the number of occupants increases from fewer than five occupants to over ten passengers.

"In fact, 15-passenger vans (with 10 or more occupants) had a rollover rate in single vehicle crashes that is nearly three times the rate of those that were lightly loaded.

"NHTSA's analysis revealed that loading the 15-passenger van causes the center of gravity to shift rearward and upward increasing the likelihood of rollover. The shift in the center of gravity will also increase the potential for loss of control in panic maneuvers.

"Because of these risks, it is important that these vans be operated by experienced drivers. A person transporting 16 or more people for commercial purposes is required to have a Commercial Driver's License, which requires certain specialized knowledge and driving skills. Although the drivers of these vehicles are not required to possess a Commercial Driver's License, they should still understand and be familiar with the handling characteristics of their vans, especially when the van is fully loaded.

"NHTSA's analysis reinforces the value of seat belts. Eighty percent of those nationwide who died last year in single vehicle rollovers last year were not buckled up. Wearing seat belts dramatically increases the chances of survival during a rollover crash. NHTSA urges that institutions using 15-passenger vans require seat belt use at all times.

"NHTSA is making this information available because of these findings and because of several highly publicized rollover accidents involving 15-passenger vans loaded with college students (often driven by a fellow student rather than a professional driver).

"While federal law prohibits the sale of 15-passenger vans for the school-related transport of high school age and younger students, no

such prohibition exists for vehicles to transport college students or other passengers.

"A copy of the NHTSA analysis of the rollover characteristics of 15-passenger vans can be found at: *http://www.nhtsa.dot.gov/people/ncsa/reports.html#2001*."

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UMA believes that the NHTSA's warning, and the accompanying rollover report, should become part of the FMCSA's official record of proceedings on this NPRM. Certainly, the FMCSA should be keenly sensitive to the recommendations of its sister USDOT highway safety agency.

Finally, should also be pointed out that while UMA wishes this category of commercial vehicle to be fully covered by federal safety oversight, we also believe that the drivers in this category must be covered, as well. Because of a nuance the way the original ICCTA enabling legislation was drafted, this rule may extend only to commercial vehicles; we are told that it does not make the drivers of those vehicles subject to the need for commercial drivers licenses (CDL), drug or alcohol testing, hours-of-service limitations or dozens of other driver-specific FMCSR's. We continue to believe that companion legislation, capable of extending the full range of FMCSR's to the operations of this class of vehicle, is critical.

In summary, UMA proposes that a single standard of safety and regulatory expectations must exist for all for-hire passenger carriers who operate in interstate commerce without regard to the size of the vehicle they operate. That standard is the one which professional bus and motorcoach operators already follow. This proposed rulemaking must apply all Federal Motor Carrier Safety Regulations (FMCSR) to all for-hire carriers.

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